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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

CHRISTOPHER M. MACROGLOU

Serial No.: 09/190,788

Filed: November 12, 1998

Art Unit: 3711

Examiner: RAEANN GORDON

Atty Dock No.: 97-019 DIV

ALIGNMENT DEVICE AND METHOD
FOR ALIGNING

Pittsburgh, Pennsylvania 15219
December 31, 2007

Mail Stop Appeal Brief-Patents
Commissioner for Patents
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Sir:

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Henry E. Bartony, Jr. Registration No. 34,772	
December 31, 2007	Dated

**APPELLANT'S REPLY BRIEF PURSUANT
TO 37 C.F.R. §41.41**

This Reply Brief is in response to the Examiner's Answer dated October 30, 2007. In the Reply Brief, Appellant follows generally the heading numbering set forth by the Examiner in the Examiner's Answer.

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1. REAL PARTY IN INTEREST

As set forth by the Examiner, the real party in interest, Christopher M. Macroglou, is identified in the Appeal Brief.

2. RELATED APPEALS AND INTERFERENCES

Once again, there are no related appeals or interferences.

3. STATUS OF THE CLAIMS

The status of the claims set forth by the Examiner in the Examiner's Answer is correct. In light of the Examiner's withdrawal of the rejection of claims 29-31, claims 21-24 and 29-31 are allowed. The appealed claims are claims 1, 2, 13-20, 27 and 28.

4. STATUS OF AMENDMENTS

As recognized by the Examiner, no amendment has been filed subsequent to the final office action.

5. SUMMARY OF CLAIMED SUBJECT MATTER

Appellant respectfully acknowledges the Examiner's indication that the summary of claimed subject matter contained in the Appeal Brief is correct.

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Appellant respectfully acknowledge the Examiners withdrawal of the rejection of claims 29-31 under 35U.S.C. Section 112, first paragraph.

7. CLAIMS APPENDIX

Appellant respectfully acknowledges the Examiner's indication that the copy of the appealed claims set forth in the Claims Appendix of the Appeal Brief is correct.

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8. EVIDENCE RELIED UPON

The Examiner correctly sets forth U.S. Patent No. 5,467,992 (Harkness) and U.S. Patent No. 6,213,887 (Carney) as the references relied upon by the Examiner in rejecting claims 1, 2, 13-20, 27 and 28 under 35 U.S.C. Section 103(a).

9. REPLY ARGUMENT

The reply arguments set forth herein are in reply to the Examiner's assertions set forth in the Grounds of Rejection section (section 9) and the Response to Argument section (section 10) of the Examiner's Answer.

Contrary to the Examiner's assertion, the device of Harkness does not and cannot provide any information to the user thereof regarding the alignment of any portion of the person's body. As admitted by the Examiner, Harkness discloses the use of only a visible spot of light projected onto the ground. As set forth in Harkness, this visible spot of light aids a golfer in observing head movement during a golf swing. This spot of light does not and cannot provide an indication of the alignment a plane transversing the person's eyes (or transversing any other portion of the person's body) when in position to perform a golf stroke or any other task as claimed in the present invention. As set forth in the Appeal Brief, the scope of the invention of Harkness is acknowledged succinctly in the abstract of Harkness as follows:

A method for using a light spot projecting aid to observe head movements during a golf swing and to provide a golfer with an explanation (i.e., cause) of the effect manifested as the light spot being moved.

Contrary to the Examiner's assertion, Harkness also does not disclose or suggest a mechanism adapted to project a generally linear extending projection of light on a surface that includes a laser and a generally cylindrical lens positioned transversely to a light beam emanating from the laser, the lens creating a planar beam of light. Lens 15 of Harkness operates merely to focus the light spot 16 thereof and is not a cylindrical lens positioned transversely to a light beam to create a planar beam of light and thereby a projection of a linearly extending projection of light. This operation of lens 15 of Harkness is clearly set forth at col 3, lines 20-26 of Harkness, cited by the Examiner.

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For different purposes, the devices of Carney can be operated so that the laser module 47 thereof emits either a beam to illuminate a spot 50 or a thin vertical plane to illuminate a line 52. However, contrary to the Examiner's assertion, there is no teaching or suggestion in Carney that a spot of light and a line of light are interchangeable. Indeed, it is merely a matter of geometry and physics that a projected spot of light as disclosed in Harkness cannot provide information of the alignment a plane transversing any portion of a person's body. Moreover, use of a line of light in the device of Harkness can, in certain situations, cause the device of Harkness to fail in its stated sole propose (that is, providing an indication to a user of movement of the user's head). For example, if a line were projected in the device of Harkness, rotational motion of the person's head along the path of the projected line may not be observable to the person. In that regard, the projected, extending line will remain projected in the same orientation although the person's head has moved or is moving. Thus, the movement of the person's head may not be perceived by the person by observation of that potion of the line visible to the person.

Like Harkness, Carney is not designed to and is not operable to provide information on alignment of the user's body. Neither Harkness nor Carney are designed to provide feedback to the user regarding the actual alignment of the user's body. Indeed, neither Harkness nor Carney even address the problem of providing such feedback.

Carney merely discloses the propagation of a line of light on the ground to indicate the target line to a particular target such as a simulated golf hole. Although Carney discloses a target line of light to which a person may attempt to align a portion of the person's body, the person is provided with no indication/feedback of how that portion of the person's body is actually aligned by the device of Carney. As body alignment is irrelevant to the stated sole purpose of the device of Harkness (which is, the detection of motion), one skilled in the art would not attempt to modify that device as suggested by the Examiner, particularly wherein projection of a line can, in certain situations, cause the device of Harkness to fail in its sole stated purpose as described above.

Moreover, even if one were to mechanically combine the source of a line of light disclosed in Carney with the device of Harkness one would not arrive at the present

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invention. As clear from the disclosure of Harkness and as demonstrated to the Examiner in the interview of March 4, 2002, the spot of light of Harkness does not even provide information as to the alignment of the headgear (whether a cap, a band, glasses or other headgear) as the device need not be placed on the headgear to project the light in any specific orientation. Converting the spot of light projected by the device of Harkness to a line of light would not provide a line of light generally parallel to the alignment line passing transversely through the person's eyes or any portion of the person's body as claimed in the present invention. Neither Harkness no Carney discloses or suggests a support or attachment for maintaining a mechanism adapted to project a generally linearly extending projection of light or a line of light onto surface in a desired orientation on a portion of the person's body so that the projection of light or line light is generally parallel to an alignment of a plane transversing the person's eyes or any other portion of the person's body. Contrary to the Examiner's assertions, the recitation of such a support or attachment is not a mere recitation of intended use, but a recitation of structure distinguishing the present invention from the disclosure of the prior art.

Appellant respectfully asserts that the Examiner has failed to make a *prima facie* case of obviousness. In that regard, even upon combining the cited references, substantial and nonobvious modification and adjustment is required to arrive at the present invention.

Appellant is the first to use an alignment line of light to provide real time feedback to a person of the actual real time alignment of a line/plane passing transversely through a person's eyes or any other portion of the person's body. To provide such alignment information to the user of the device of the present invention is a substantial improvement in the art of, for example, golf instruction, analysis and practice. There are substantial differences between the teachings of Harkness and Carney and the presently claimed invention. A person having ordinary skill in the art would not have and could not have combined Harkness and Carney in a fashion encompassed by the claims of the present invention absent use of hindsight afforded by Appellant's specification.

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X. RELATED PROCEEDINGS APPENDIX

As indicated by the Examiner, there are no related proceedings.

In view of the foregoing, the Appellant respectfully requests that the Board of Appeals and Interferences reverse the Examiner's rejection of the claims, and that the Examiner indicate the allowability of Claims 1, 2, 13-24 and 29-31 and arrange for an official Notice of Allowance to be issued in due course.

Respectfully submitted,

CHRISTOPHER M. MACROGLOU

Date: December 31, 2007

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